OREGON TERRITORY.

MEMORIAL

OF

THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF OREGON,

ASKING FOR

Certain alterations in the Organic Law of said Territory.

FEBRUARY 3, 1852.

Referred to the Committee on Territories, and ordered to be printed.

To the Senate and House of Representatives of the United States:

Your memorialists, the Legislative Assembly of the Territory of Oregon, legally assembled at Salem, in said Territory, on the first Monday of December, A. D. 1851, representing the people of Oregon, respectfully but earnestly represent unto your honorable body, that the people of this Territory, after long delay and many disappointments, (the causes of which it is needless now to determine,) had extended over them the constitution and laws of the United States, by an act of Congress approved August 14, 1848, and known as the "Organic Act" of this Territory.

Oregon numbered at that time about ten thousand souls. From the 26th of July, A. D. 1845, up to this period, the people had lived, both at war and in peace, under a fundamental compact of their own creation, styled the "provisional government." They created executive, legislative, and judicial departments; selected men to fill those several stations from among themselves, and by these means preserved and maintained inviolate their lives, liberty and property, with a savage enemy on their borders and a foreign organization in their midst; thus successfully vindicating their capacity for self-government. The law of 14th of August came, and with it ceased all direct connexion and sympathy between the people on the one hand, and the officers of the executive and judicial departments on the other, at least so far as the same could be effected by the manner of their selection, and the power to whom they were accountable. While the provisions of this act are similar in the main to those passed by Congress prior to that period for the organization of Territories, it differs materially from them all in two respects: First, in the total separation of the executive and legislative departments; and, second, in the restriction imposed on the Legislative Assembly contained in the last clause of the sixth section of that act, as to the mode or manner of exercising their legitimate powers.

Since that time we have had two governors: the first, General Lane, en-

tered upon the duties of his office on the 3d of March, A. D. 1849, and set the wheels of the new government in motion by a proclamation of that date, announcing the organization of the Territory. He remained continuously in our midst, faithfully devoting his time and talents to the best interests and welfare of the people, until the 18th of June, 1850, when he was removed to make room for the present incumbent.

Governor Gaines arrived in the Territory in the month of August, 1850, and has remained in the country, except a short absence, ever since. His administration so far, whatever may have been his motives or the causes of the misfortune, has been characterized by a total want of confidence and sympathy between himself and the people. Ever since he landed upon our shores and entered upon the duties of his office, either from mental perverseness, or, what is more probable, the mischievous advice of the district attorney, Amory Holbrook, he has sought, by indirect and extra-official acts, to usurp powers placed in the hands of the representatives of the people alone; and the consequence has been, that confusion and discord have, like the cloud that precedes the storm, overshadowed our public affairs.

As an illustration of this course of conduct pursued, and the consequences resulting therefrom, your memorialists submit the following facts: Although by the organic law "the sum of five thousand dollars is appropriated, to be applied by the governor to the erection of suitable buildings at the seat of government;" and although the Legislative Assembly, as authorized by that act, did "proceed to locate and establish the seat of government for the Territory," by an act passed February 1, 1851, he, prompted, no doubt, by Amory Holbrook, officiously sent that body a message, declaring the act void, and has ever since assumed, without the semblance of authority on his part, to treat the same as a nullity, to withhold the appropriation, and to keep the archives and public library under his own shadow, at another and different place entirely.

By an act of the Legislative Assembly, passed May 16, A. D. 1850, the governor is authorized to fill any vacancies that may occur in the territorial offices during the recess of that body; and although the legislature has been in session two weeks, he has not deigned to report to this body any account of appointments so made; but, with an utter disregard and contempt for the people and their representatives, as appears from the announcement of the public journals of the day, has actually assumed to appoint a territorial treasurer and librarian during the present sitting of the legislature.

Since the 14th of August, 1848, we have been entitled to the presence and services of three judges. How stands the account?

The Hon. O. C. Pratt, the first officer in the Territory, in point of time, arrived here in December, A. D. 1848; from that time until the arrival of the Hon. W. P. Bryant, on the 9th of April, 1849, there was but one judge in the Territory.

By reason of the absence of Bryant from the month of June until the month of September, A. D. 1849, we were left with but one judge again.

From that time until December, 1849, there were only two, when Bryant left the Territory, to which he has never returned; and, as your memorialists are informed and believe, withheld his resignation until the first of January, 1851, unscrupulously receiving his salary up to that date.

From the date of his departure, there remained but Judge Pratt in the Territory, until August, 1850, when he went to the States for his family, and returned in the month of April, A. D. 1851, where he has remained ever since. The Hon. William Strong arrived in the country in the month of August, 1850, and the Hon. Thomas Nelson in the month of April, A. D. 1851.

Thus it will be seen at a glance, that the practical operation of the present system of appointing the judiciary has been to give the people of this Territory, in the aggregate, but about four years and seven months of judicial service, while by law they have been entitled to *nine years and nine months*—a falling off of one half.

The services have been rendered by the judges who have from time to time been sent among us, in the following proportions: Judge Pratt, two years and two months; Judge Bryant, seven months; Judge Strong, one year and three months; Judge Nelson, seven months. Since the organization of the Territory, the three judicial districts have been entitled, in the aggregate, to *sixty-two* regular terms of the district court; but a careful examination of the facts, as your memorialists believe and are well informed, shows that but twenty-five were ever held. Another serious evil to the peace and quiet of the community and the security of property, has arisen from the interference of one district court with the process of the other, thus rendering each, if the same spirit is carried out by all, powerless to protect itself and the rights and property of its suitors.

As an instance of this state of things, your memorialists beg leave to submit the following facts: In the month of July, 1851, an injunction was granted against one Arthur Fayhie, by Judge Pratt, at Chambers, according to the statutes of this Territory, to stay waste. The process was contemptuously disregarded: Fayhie was tried for the contempt and ordered to be imprisoned ten days, and fined fifty dollars. On a petition to Judge Nelson, of the first judicial district, charging the judge of the second district with misconduct in office, the former issued a writ of *habeas corpus*, and, with the advice of Judge Strong, proceeded at Chambers, without alleged defect in the warrant of commitment, to sit in judgment on the question of jurisdiction in matters of contempt, in such cases, and enlarged the prisoner.

At the October term, A. D. 1851, of the district court, in and for the second judicial district, sitting in the county of Washington, one W. W. Chapman, an attorney of the court, having deliberately committed what was deemed a gross contempt of court, in open court, after a hearing, was ordered to be stricken from the roll of attorneys of that court, and to stand committed twenty days. Afterwards, and after an escape from the officer and re-capture, all of which was known to Judge Nelson, of the first district, on application to him the said Chapman was discharged on his order, on a writ of error; all of which proceedings, as your memorialists are well informed and believe, are neither warranted by the statutes of this Territory, nor known in the course of the common law, whereby every court is necessarily the exclusive judge of all contempts committed, either in its presence or against its process.

Who is right in these matters it is not our province or desire to determine. The facts have been set forth for your consideration, and it is only necessary to add the result as seen and felt by the community at large: that is, a general sense of an impossibility to maintain order and judicial

authority in the second judicial district, by reason of illegal interference in its affairs, on the part of the judge of the first; and so extensive is this feeling, that unless an early corrective be applied, your memorialists entertain fears that serious violence and breaches of the peace may ensue.

Your memorialists further represent, that by the organic act, the chief and two associate judges of the Territory "shall hold a term of the supreme court at the seat of government annually," and that, as yet, no regular term of said court has been holden in said Territory, if we except the assembling of two of the judges at Oregon city, on the first Monday of December, A. D. 1851, and the presence of the other at Salem at the same time, for the same purpose. The acts of the former are based upon the assumption that Oregon city is the seat of government; which assumption, as shown by those judges in their written opinion, emanating from that place on this subject, rests entirely on the fact that the "legislative body of the provisional government," by an act of the 27th of June, 1844, fixed the seat of government at Willamette Falls.

The acts of the latter are based upon the directions of the statute before alluded to, passed February 1, 1851. Upon this subject we submit the following facts: First, that there never was any law of the provisional government, so called, locating the seat of government at the falls of the Willamette or elsewhere, much less one passed in the year 1844, as the provisional government commenced its existence on the 26th of July, 1845; at which time the articles of compact upon which it was based, and from which it derived its title, were adopted by a direct vote of the people.

The deed spoken of as a law, was an act of a few missionaries and trappers, under a conventional arrangement consisting of an executive committee of three, and a legislative committee of nine, being the first attempt at government in the Territory, if we except the Hudson's Bay Company, but was entirely thrown aside and blotted out by the large emigration from the States that fall, who built upon its ruins the provisional government.

By the organic law, "the Legislative Assembly" was "to hold its *first* session at such time and place as the governor should appoint and direct." He named Oregon city—not as the seat of government, for that was beyond his power—but for the sitting of the Legislative Assembly during its first session. The legislature met in July, 1849, and adjourned without locating the seat of government, by reason of a disagreement between the two houses.

In May, 1850, there was a called session, which by the consent of Gen. Lane, and the common consent of its members, met at Oregon city, and adjourned without making a location. The second regular session of the assemblymet, by common consent, at Oregon city, and at that session did "proceed to locate and establish the seat of government" at Salem, by an act entitled "An act to provide for the selection of places for the location and erection of the public buildings of the Territory of Oregon."

At the latter place your memorialists, comprising eighteen of the twenty-two members constituting the House of Representatives, and eight of the nine members constituting the Council, met on the first Monday in December of the present year, and, after regularly organizing as the Legislative Assembly of this Territory, have proceeded to enact laws and exercise all other powers that a body of that kind may, and of right ought to do.

Your memorialists conceive it is not for them to decide, as between the

judges, who is right or who is wrong on this question. An imperative sense of duty has prompted us to meet at this point, conceiving that *prima facie*, at least, the seat of government is here, and well convinced, at most, that it was never established at Oregon city.

Those judges who have assembled at Oregon city, have fulminated against us, and our acts, paper decrees, characterizing us as revolutionists and disorganizers. We do not conceive it befitting our station to reply in the same spirit and language, but feel assured of one thing—that if the difficulties and embarrassments which at present surround us, ever do reach the extreme that they have intimated we now occupy—*that is*, revolution—the people of this Territory will be found on the one side, and *they* on the other. They are not amenable to us, though we alone must suffer, both from their errors of judgment and intention.

Your memorialists therefore suggest, and earnestly request, as the only complete remedy for our present and past grievances, and faithful guarantee that they will not again occur, that at your earliest convenience at your present session, you will so amend the organic act of this Territory as to permit and authorize the qualified voters of this Territory to vote for and elect their governor, secretary and judges, to hold their offices for the same time, to receive the same salaries, payable at the same time and in the same manner as at present.

Many good and substantial reasons, as your memorialists conceive, demand this change, growing directly out of the present embarrassment under which the people labor, by reason of the feud existing between them and those strangers appointed to rule over them; and also among the latter themselves.

Independent of this, your memorialists are well convinced that the system of appointments by the President, of men to execute and construe our laws who are strangers to our wants, our customs, our sympathies, and our feelings, is intrinsically wrong, and that it is especially so when applied to a Territory situated, as this is, five thousand miles from the federal capital: we think this is apparent to every candid mind who knows the facts.

The few instances of men sent among us who have secured the confidence of the people and risen superior to the temptations and opportunities which the system combined with our situation presents, to neglect the people and their interests, to make self-aggrandizement the principal aim and object of their stay among us, while their official duties remain as a mere incident or a stepping-stone to the former, form honorable exceptions to the rule, but are only exceptions, and have proved such in spite of the system and its manifest tendencies.

In addition to this, public confidence in the competency of the judiciary department has become greatly impaired, through serious disagreements of opinion and action among its members on vital and important questions touching the public interest.

As a consequence of this, much crimination and recrimination has taken place, not only between the persons of the judges themselves, but their respective friends; all of which has seriously impaired the wholesome and proper respect for judicial authority. The merits and fitness of our present judges for their respective stations constitute a subject of much delicacy with your memorialists, and, so far as the same has been incidentally alluded to, has only been done to the end that Congress may the better understand some of the present embarrassments of the Territory, resulting

from what is conceived to be judicial misconduct. Although our request may be objected to, as novel, and for want of precedent, an answer to this objection, so far as it goes, may be found in the fact that our position and relation to the federal government are also novel and without precedent.

The government of the United States is based upon the proposition that man is capable of self-government. If, when the people of this Territory, numbering less than half the present population, were capable of originating and maintaining, out of the crude and conflicting elements then existing, a government for themselves, your memorialists can see no good reason why they are not capable at this day to select from among themselves men of their own choice to execute and construe their laws. In our present situation we sustain the position of absolute dependents, unfortunately not directly upon the will of a beneficent Congress, but upon the caprice of adventurers and strangers who come here by the accident of party ascendency, and treat their official position, when here, as a reward for political services already rendered to their party at home, rather than as a means of advancing our prosperity and interests. Although the Territories are the *property* of the United States, we conceive their inhabitants are *citizens* of the United States, and should enjoy and exercise, so far as Congress can extend it to them, the freedom of freemen.

Chancellor Kent, twenty-six years ago, speaking of our territorial form of government, with a verity amounting almost to prophecy, describes what will be its operations when the great valley of the Columbia comes to be settled and governed by it. He says: "The colonists would be in a most complete state of subordination, and as dependent upon the will of Congress as the people of this country (United States) would have been upon the king and Parliament of Great Britain if they could have sustained their claim to bind us in all cases whatsoever."—(*Vide* 1*st Kent, p.* 385.)

Again, upon the same subject, he says: "Such a state of absolute sovereignty on the one hand, and of absolute dependence on the other, is not congenial with the free and independent spirit of our native institutions; and the establishment of distant territorial governments, ruled according to will and pleasure, would have a very natural tendency, as all pro-consular governments have had, to abuse and oppression." Could he rise from the grave where his honored ashes now sleep, he would this day behold, in the condition of the people of the Territory of Oregon, the prophecy more than realized.

We therefore, the representatives of the people of Oregon, and on their behalf, calling upon God to witness the rectitude of our intentions, and relying with confidence on the wisdom and magnanimity of an American Congress to speedily relieve us from this confusion and misrule that, like an incubus, weighs upon the body of the people, and paralyzes its energies from the centre to the extremities, earnestly ask that you will, by granting the prayer of this memorial, place us on a level with freemen, where our rulers will be men of our own choice; and your memorialists, as in duty bound, will ever pray, &c.

Passed the Council December 17, 1851.

SAMUEL PARKER,
President of the Council.

Passed the House of Representatives December 18, 1851.

WM. M. KING,
Speaker of the House of Representatives.